

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PHILIP M. FOSTER,

Case No. 3:12-cv-00496-MMD-VPC

Plaintiff,

ORDER

v.

STATE OF NEVADA, et al.,

Defendants.

Before the Court is the Report and Recommendation ("R&R") of the Honorable Valerie P. Cooke, United States Magistrate Judge, entered on August 28, 2013 (dkt. no. 5), regarding Plaintiff's Motion for Leave to Proceed *in forma pauperis* (dkt no. 1) and Plaintiff's Complaint (dkt. no. 1-1). The R&R recommends that Plaintiff's Application for Leave to Proceed *in forma pauperis* be granted, but that Plaintiff's Complaint be dismissed with prejudice.

Plaintiff has filed no objections. This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct

1 "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*,
2 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is
3 not required to review a magistrate judge's report and recommendation where no
4 objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir.
5 2003) (disregarding the standard of review employed by the district court when reviewing
6 a report and recommendation to which no objections were made); see also *Schmidt v.*
7 *Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit's
8 decision in *Reyna-Tapia* as adopting the view that district courts are not required to
9 review "any issue that is not the subject of an objection."). Thus, if there is no objection
10 to a magistrate judge's recommendation, then the court may accept the recommendation
11 without review. See, e.g., *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without
12 review, a magistrate judge's recommendation to which no objection was filed).

13 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
14 determine whether to adopt Magistrate Judge Cooke's Recommendation. Upon
15 reviewing the Recommendation and underlying papers, this Court finds good cause to
16 adopt the Magistrate Judge's Recommendation in full.

17 It is hereby ordered that Magistrate Judge Cooke's Report and Recommendation
18 (dkt. no. 5) is accepted and adopted.

19 It is therefore ordered that Plaintiff's Complaint (dkt. no. 1-1) is dismissed with
20 prejudice.

21 The Clerk of the Court is instructed to close this case.

22 DATED THIS 19th day of November 2013.

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25 MIRANDA M. DU
26 UNITED STATES DISTRICT JUDGE
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